Farmers Energy Corporation *and* Mary L. Blackard

Farmer's Energy Corporation *and* Local 108, American Federation of Grain Millers, AFL–CIO and Congress of Independent Unions, Solar Energy Workers, Local 1, Party in Interest. Cases 14–CA–14997 and 14–CA–14997–2

May 4, 1983

DECISION AND ORDER

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On September 30, 1982, Administrative Law Judge George F. McInerny issued the attached Decision in this proceeding. Thereafter, the General Counsel and Respondent filed exceptions and supporting briefs.[1]

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor RelationsBoard has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order, as modified herein.

The General Counsel excepts to the failure of the Administrative Law Judge to find that the Congress of Independent Unions (C.I.U.) did not represent an uncoerced majority of Respondent's employees in the appropriate unit and to his failure to order that Respondent cease recognizing and bargaining with the C.I.U. For the reasons set forth below, we find merit in the General Counsel's exceptions. In order to place our conclusions in context, we first summarize the relevant findings of the Administrative Law Judge.

In April 1981,[3] Supervisor Vendig conceived the idea of bringing the C.I.U. into the plant to organize the Company's employees. On April 9, Vendig chose employee Rogers to serve as his instrument in effectuating the organizing of the employees. Later that same day, Vendig told Supervisor Brechner there was going to be an employee meeting, and he instructed Brechner to make sure that employees attended the meeting with Rogers on company time to discuss organizing. At that meeting, when pressed by several employees, Rogers admitted that he had obtained the name of the C.I.U. from Vendig. Within 2 weeks thereafter, Respondent recognized the C.I.U. on the basis of a card check conducted by a third party.

On April 23, immediately following recognition of the C.I.U., the Company and the Union commenced negotiations. In early May, when one of the union committee members failed to appear at a bargaining session, Vendig called that person and two other employees into his office and directed that they select one of their number to participate as a member of the negotiating committee. Vendig stated that that person would attend every bargaining session and that nobody would do anything about it.

On the evening of May 13, the bargainers reached a tentative agreement. On both May 12 and May 13, Vendig told Brechner to inform the employees that if they did not ratify the contract there would be either layoffs or a plant closing. Brechner reported Vendig's statements to other supervisors. On May 13 and May 14, Brechner and other supervisors advised employees that if they did not ratify the contract the company might close the plant, discharge employees, or lay off employees. On May 14, the employees voted to ratify the contract.

The Administrative Law Judge found that by initiating the idea of bringing the C.I.U. into the plant, permitting its facilities to be used by an employee organization, paying employees for participation in union activities, determining the makeup of the employee negotiating committee, and issuing (through its supervisors) threats of plant closure, discharge, and layoffs, Respondent unlawfully assisted in the formation and administration of the C.I.U. and unlawfully restrained and coerced employees. We agree with these conclusions. We further find, however, that Respondent's conduct tainted the C.I.U.'s majority status, and that consequently Respondent's recognition of the C.I.U. was unlawful.

In analyzing this issue, the Administrative Law Judge focused narrowly on the events immediately preceding the grant of recognition and failed to view them in the context of the entire case. We cannot agree with that approach. In assessing the impact of a respondent's assistance to a union, the Board examines the totality of circumstances to determine whether the respondent's conduct tainted the union's majority status. The totality of circumstances consists of post-recognition as well as pre-recognition conduct of a respondent. See *Siro Security Service, Inc.*, 247 NLRB 1266, 1271–72 (1980).

[1] Respondent filed a motion to disregard the General Counsel's exceptions and the General Counsel filed a response in opposition to Respondent's motion. Respondent's motion is hereby denied as lacking in merit.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

[3] All dates hereinafter refer to 1981, unless otherwise indicated.

In *Serrick Corporation*,[4] the Supreme Court expressly agreed with the view of the court below that in cases of this kind events cannot be separated "artificially from their background and consequences, and from the general contemporaneous current of which they were integral parts."

Returning to the circumstances herein, we note specifically (as detailed by the Administrative Law Judge and above) that Respondent conceived the idea of employees organizing, selected an employee to guide the campaign, made its facilities available to employees to discuss organizing, and directed supervisors to ensure that employees attended organizing meetings; that the employees were aware the C.I.U.'s name had come from the Company; that Respondent interjected itself in the selection of employees' bargaining representatives; and that Respondent engaged in an intense campaign of threats to guarantee that employees approved the agreement reached by the bargainers. We believe these acts comprise a single course of conduct which constitutes the circumstances of this case. Based on these circumstances, we find it reasonable to conclude that Respondent's conduct intruded on its employees' statutory right so as to make the authorization cards obtained by the C.I.U. unreliable as indicators of employee choice.

Consequently, we find that Respondent, by recognizing the C.I.U. on the basis of the authorization cards, deprived employees of that free choice of bargaining representative guaranteed to them by the Act and unlawfully assisted the C.I.U. in violation of Section 8(a)(2) and (1). We shall therefore order that Respondent cease recognizing and bargaining with the C.I.U. unless and until that Union has been certified by the Board as the exclusive bargaining representative of Respondent's employees.[5]

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge, as modified below, and hereby orders that the Respondent, Farmers Energy Corporation, National City, Illinois, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as so modified:

1. Add as paragraph 1(a)(v) the following:

"(v) Recognizing or bargaining with the Congress of Independent Unions, Solar Energy Workers, Local 1, or any successor thereto, as the representative of any of its employees for purposes of collective bargaining unless and until said labor organization has been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees."

2. Add the following as paragraph 1(d) and reletter the subsequent paragraph accordingly:

"(d) Giving effect to, performing, or in any way enforcing the collective-bargaining agreement dated May 14, 1981, or any modification, extensions, or renewals thereof, or any other contract, agreement, or understanding entered into with the Congress of Independent Unions, Solar Energy Workers, Local 1, or any successor thereto, provided, however, that nothing in this Order shall require Respondent to vary or abandon any wage increase or other benefits, terms, and conditions of employment which may have been established pursuant to the performance of said collective-bargaining agreement."

3. Add the following as paragraph 2(a) and reletter the subsequent paragraphs accordingly:

"(a) Withdraw and withhold all recognition from the Congress of Independent Unions, Solar Energy Workers, Local 1, as the collective-bargaining representative of its employees unless and until said labor organization has been certified by the National Labor Relations Board as the exclusive bargaining representative of such employees."

4. Substitute the attached notice for that of the Administrative Law Judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

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[4] *International Association of Machinists, Tool and Die Makers Lodge No. 35 [Serrick Corporation]* v. *N.L.R.B.*, 110 F.2d 29, 35 (D.C. Cir. 1939), affd. 311 U.S. 72, 78 (1940).

[5] Inasmuch as we have found that the C.I.U. did not represent an uncoerced majority of employees, we adopt the Administrative Law Judge's conclusion that Respondent violated Sec. 8(a)(2) and (3) by executing a collective-bargaining agreement with the C.I.U. that included union-shop provisions. We find it unnecessary to the disposition of this case to pass upon the Administrative Law Judge's discussion of whether ratification was a condition precedent to the effectuation of that agreement.

We note that in his remedy section the Administrative Law Judge inadvertently failed to specify the method by which interest on dues reimbursements should be computed. We hereby modify the Administrative Law Judge's remedy to provide that interest shall be added to said reimbursements in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977); see, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

WE WILL NOT assist any labor organization by: giving the names and addresses of union agents to our employees; interfering with employees' free choice of a bargaining representative; furnishing free facilities for unions, or paying employees for time spent at union meetings; recognizing or bargaining with the Congress of Independent Unions, Solar Energy Workers, Local 1, or any successor thereto, as the representative of our employees for purposes of collective bargaining unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive bargaining representative of our employees.

WE WILL NOT threaten our employees with discharge or layoff if they do not ratify a union contract.

WE WILL NOT give effect to, perform, or in any way enforce the collective-bargaining agreement dated May 14, 1981, or any modification, extensions, or renewals thereof, or any other contract, agreement, or understanding entered into with the Congress of Independent Unions, Solar Energy Workers, Local 1, or any successor thereto; provided, however, that nothing herein shall require us to vary or abandon any wage increase or other benefits, terms, and conditions of employment which we have established in performance of that agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by Section 7 of the National Labor Relations Act, as amended.

WE WILL withdraw and withhold recognition from the Congress of Independent Unions, Solar Energy Workers, Local 1, as the collective-bargaining representative of our employees unless and until that labor organization has been certified by the National Labor Relations Board as the exclusive bargaining representative of our employees.

WE WILL immediately cease giving effect to a contract between us and the Congress of Independent Unions dated May 14, 1981.

WE WILL pay back to our employees any dues they have paid under the union-shop provisions of that contract, together with interest thereon.

FARMERS ENERGY CORPORATION

DECISION

STATEMENT OF THE CASE

GEORGE F. MCINERNY, Administrative Law Judge: On May 21, 1981, Mary L. Blackard, an individual, filed the charge in Case 14–CA–14997 alleging that Farmers Energy for Embassy, Incorporated,[1] had violated Section 8(a)(1) and (2) of the National Labor Relations Act, as amended, 29 U.S.C. §§ 151, 158(a)(1) and (2), herein referred to as the Act. On June 10, 1981, Local 108, American Federation of Grain Millers, AFL–CIO, herein referred to as Local 108, filed the charge in Case 14–CA–14997–2 alleging violations of Section 8(b)(1), (2), and (5) of the Act. This latter charge was amended on June 30 and July 16, 1981, alleging further violations of the Act.

Thereafter, on March 4, 1982, the Regional Director for Region 14 of the National Labor Relations Board, herein referred to as the Board, issued an order consolidating Cases 14–CA–14997 and 14–CA–14997–2, and a complaint alleging that the Company had violated and was violating Section 8(a)(1), (2), and (3) of the Act. On March 11, the Company filed an answer to this complaint denying the commission of any unfair labor practices.

Pursuant to notice contained in the said Regional Director's March 4, 1982 order, a hearing was held before me in St. Louis, Missouri, on June 9, 1982, at which all parties were represented, were given the opportunity to present testimony and documentary evidence, to examine and cross-examine witnesses, and to argue orally. Following the close of the hearing the General Counsel and Respondent filed briefs which have been carefully considered.[2]

Upon the entire record including my observation of the witnesses and their demeanor, I make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Farmers Energy Corporation is a corporation duly authorized to do business under the laws of the State of Illinois. It was engaged at all times material herein in the manufacture of products to be used as dog food, and in the preparation of facilities for the extraction of ethyl alcohol at its principal office and place of business in Na-

[1] Here referred to as the Company or Respondent. There is no question that the correct name for the Company is Farmers Energy Corporation as appears in the complaint and other papers in this case.

[2] After the briefs in this case were received, the General Counsel filed a motion to strike Respondent's brief, or, in the alternative, to strike pars. 3 and 4 on pp. 2 and 3 of Respondent's brief on the grounds that the matters described therein did not appear in the record of this case; and, in addition, that those matters are irrelevant and immaterial to this proceeding. I agree with the General Counsel on both points. Moreover, I note that the concluding sentence on the first paragraph on p. 3 of Respondent's brief states that "All of the facts cited in this paragraph were found in the formal pages of this hearing." I cannot believe that counsel, by this statement, intentionally tried to deceive, but I cannot escape the conclusion that the subject was not very carefully researched since the matters referred to in this statement appear nowhere in the record. The General Counsel's motion to strike pars. 3 and 4 on pp. 2 and 3 of Respondent's brief are stricken.

tional City, Illinois. During the year ending February 28, 1982, which period is representative of its operations at all material times here, Respondent purchased goods and materials valued in excess of $50,000 directly from points outside the State of Illinois. Respondent likewise sold and shipped directly to points outside the State of Illinois products valued in excess of $50,000. The complaint alleges, the answer admits, and I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The complaint alleges, the answer admits, and I find that Local 108 and Congress of Independent Unions, Solar Energy Workers, Local 1 (herein referred to as C.I.U.) are labor organizations within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Company or its predecessor had been engaged in the manufacture of dog food at National City, Illinois, but by October 1980 it was remodeling the existing plant with a view to making ethyl alcohol[3] out of agricultural products. The alcohol would then be sold for mixture into gasohol, and the scrap mash, presumably with all the alcohol removed, would be processed into dog food.

Mary Lynn Blackard, who impressed me as an intelligent, candid, and credible witness, testified that she came to work at the Company as a toolroom attendant in September 1980. In November or December of that year a picket was set up by the Teamsters Union for about a week. According to Blackard, the employees were informed at a meeting by Herb Vendig,[4] the construction supervisor for the alcohol operations, that the Teamsters were only interested in construction jobs and were not really interested in representing the employees of the Company. Blackard quoted Vendig as saying that the employees would not have to worry about the Teamsters getting them fired.

B. *The C.I.U. Organization*

Early in April 1981[5] Vendig called Assistant Superintendent Ed Brechner into his office. Brechner had been hired as a laborer in September 1980, then promoted successively to supervisor and assistant superintendent. He was discharged on July 11. Brechner is married to Cindy Cummins who also worked for the Company as a clerical employee.[6] Respondent urges that I discredit Brechner's testimony because of this discharge. I found Brechner to be a reliable and credible witness based on his demeanor, and the consistency of his testimony with other admitted facts. Therefore I credit his testimony on the genesis of the C.I.U. organizing campaign as well as his statements at the time of contract ratification.

At the early April meeting Vendig told Brechner that he was bringing a union into the Company. He said that he knew the union representative well, and that he could set the Union up in whatever way he saw fit, and the workers would not have too much to say. Vendig concluded that he wanted Brechner to represent the Union, and would advise him further.

About 5 or 6 days later[7] Vendig again called Brechner in to his office. He said that since Brechner was a supervisor the Union did not want him. Vendig then said that he had chosen a carpenter named Roy Rogers to be the union representative. Vendig then proceeded to call Rogers into the office, in Brechner's presence, and handed Rogers a card with the telephone number of a union representative on it. He told Rogers to call the union representative and set up a meeting.

Later that morning Vendig told Brechner that there was going to be an employee meeting in the lunchroom at 12:30 p.m. Brechner was told to tell all of the supervisors to inform their employees of this meeting. Neither Brechner nor any other supervisor attended the meeting.

Employees Rurie Shields, Norman Faulkcon, and Melvin Jones did attend the meeting. Rogers informed the employees that he had arranged a meeting that night with a union representative at a motel.[8] Norman Faulkcon asked why they had to go to the motel and suggested that the union representative meet with them there at the plant. Rogers said that he would try to arrange it. Faulkcon and others also pressed Rogers on where he obtained the union representative's name and Rogers finally admitted that he got it from Vendig. Nothing further occurred at the meeting which lasted about a half hour. The employees were paid for the time spent at the meeting, which took place on working time.

That evening after work the employees met outside the gate with Truman Davis, the national president of the C.I.U. According to Rurie Shields and Norman Faulkcon, Davis told the employees that he could get them 50 cents right away, but could not or would not comment on other benefits.[9]

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[3] Also described as ethanol or methanol.

[4] Vendig had left the Company's employ sometime between the time of the events which make up the facts of this case, and the time of the hearing. The statement on p. 7, l. 2, of Respondent's brief, that "it was precluded from presenting" Vendig is misleading. Vendig did not appear because he had been discharged by Respondent and they could not find him. Respondent was not "precluded" by the Administrative Law Judge, nor by the General Counsel, from bringing Vendig in to testify.

[5] All dates henceforward are in 1981 unless otherwise specified.

[6] Cummins no longer worked for the Company at the time of the hearing, but there is no evidence in the record to support Respondent's assertion in its brief that she also was discharged.

[7] I find this date to be April 9.

[8] Rogers was obviously the pivotal figure in this union organization, but he was not called as a witness. The General Counsel stated on the record that Rogers was present in the hearing room. Despite this, neither the General Counsel nor Respondent called him as a witness. Because Rogers was in the hearing room and available to both parties, I will draw no inferences from his failure to testify. Further I will make findings on statements attributed to Rogers, as at the April 9 meeting, where there was no objection to these statements when made. In any event I think my basic findings on this as part of the case can be made without reliance on anything reportedly said by Rogers.

[9] I make this finding on the testimony of Faulkcon, whom I found to be a credible and reliable witness. Shields was accurate, but tended to ramble, and to confuse one meeting with another. Davis, who denied that he had said anything about money at this meeting, was so confused as to be practically incoherent. Later, although he admitted that he kept full records on calls, meetings, and negotiations, he displayed total ignorance of dates, times, and meetings. In view of this I do not credit Davis on any facts as to which he testified.

This meeting ended inconclusively, but apparently there was another meeting some days later at a Holiday Inn in Collinsville, Illinois, at which authorization cards were signed[10] and an employee negotiating committee was formed composed of an individual from each craft or department of the Employer's operation.

After this second meeting between the C.I.U. and the employees, Davis called Vendig to demand recognition. Vendig, in turn, referred Davis to the Company's labor attorney, John Harris. Harris testified on behalf of Respondent indicating that his firm represents management in the field of labor relations, and that he himself had some 25 years of experience in this field. Harris also testified that he has been retained for a long time by Piasa Motor Fuels which is owned by the Shrimp (or Shrimpf) family. Robert Shrimp, who was identified by several employee witnesses as the financial backer of Respondent, was named by Harris as the "dominant financial interest" in Respondent. Harris stated that he had met Vendig when picketing took place earlier, as mentioned by Mary Blackard, in November or December 1980.

Whatever prior contacts there may have been between Vendig and Harris,[11] Vendig did call Harris sometime after receiving the demand for recognition. Harris in turn contacted Davis and agreed with him to submit authorization cards to a neutral third party for authentication. The neutral was a Professor Neil N. Bernstein, of the Washington University School of Law in St. Louis. Bernstein examined the cards and found that the majority status of the Union had been established in the unit stipulated as to size and composition by the parties. Whereupon the Company recognized the Union on April 21 or 22 and commenced collective bargaining on April 23.

This evidence shows that the very idea of bringing the C.I.U. into the Company arose in the mind of Herb Vendig. The idea became action in Vendig's two conversations with Brechner early in April. Apparently between the first and second of these meetings Vendig learned, we know not from whence, that Brechner was ineligible, as a supervisor, to lead the organizational campaign, so Vendig chose Rogers to act as his instrument[12] in effectuating the organization of the C.I.U. Vendig next instructed Brechner to see to it that the employees attended a meeting with Rogers on company time to discuss affiliation with a union. The employees did attend such a meeting and they were paid for the time.

The evidence here shows no further participation by management in the organizational process. No supervisors or other management personnel were present at the meeting outside the gate on April 9 or the meeting at the Holiday Inn a few days later. There is no evidence that any management people were involved in the distribution or signing of the authorization cards. The cards were verified and the Union recognized without any visible management participation beyond Vendig's instructions to Rogers to go and call the Union. However, I view this act of management in the original organization of the C.I.U. as an unlawful interference with the rights of employees to choose their own representative, and, further, in violation of Section 8(a)(1) and (2) of the Act. *N.L.R.B.* v. *Post Publishing Co.*, 311 F.2d 565 (7th Cir. 1962). This conduct alone does not require that the union so assisted be disestablished. There was no other union seeking to represent Respondent's employees at the time, and while Davis' remarks on April 9 that he could get the employees a 50-cent raise are suspicious, I can find no evidence of prior collaboration between Respondent and the C.I.U.[13] *Carpenter Steel Co.*, 76 NLRB 670 (1948).

C. *The Negotiations*

Three witnesses testified about the collective-bargaining negotiations which began on April 23 and continued until May 13, when agreement was reached on a collective-bargaining agreement. The testimony of Truman Davis can be disregarded as worthless, as I have noted above. Rurie Shields' testimony was rambling and barely coherent. Shields apparently did not approve of the progress of the negotiations, but his expressions of protest were, in his view, ignored. But because of his lack of coherence, I cannot credit Shields' description of the negotiations. Finally, John Harris testified, volubly and at length, about the negotiations, introducing his notes taken at the meetings and a working draft allegedly submitted to him by Davis.

While Harris' testimony and notes are self-serving, an examination of his testimony and notes, as well as the contract which resulted from the negotiations, convinces me that the negotiations were, at least on the surface, genuine. While I cannot exclude the possibility of prearranged economic parameters, the contract itself appears perfectly legitimate. Indeed, there is no allegation in the complaint herein which alleges that the conduct of Respondent in the negotiations was unlawful.

While the negotiations were in progress there occurred two incidents which are alleged by the General Counsel as violations of law. The first happened sometime around the first part of May. Rurie Shields, a member of the negotiating committee, testified that he was not notified of the scheduling of one of the meetings.[14] The next day, according to Shields, Supervisor Willie Smith told him there had been a meeting the night before. Shields said he did not know about it. On the next day Vendig called Shields, Norman Faulkcon, and Leslie Lee into his office. Shields, Faulkcon, and Lee are all Black and all electricians. Shields' testimony, as corroborated by

[10] The cards submitted in evidence show dates between April 12 and 23 with the majority signed on April 15.

[11] There is no evidence here of dealings between Harris and Vendig before this time other than the Teamsters matter.

[12] Brechner's description of Vendig handing Rogers the card with the C.I.U. address and telephone number, and his instructions to Rogers at that April 9 meeting, would certainly point to the conclusion that Rogers was the Company's agent. However, in the absence of an allegation to that effect, and in the absence of testimony from Rogers or Vendig, I cannot say that the matter has been fully litigated. I thus do not find that Rogers was the agent of Respondent in this aspect of the case.

[13] Brechner's testimony about a "contract" he found on Vendig's secretary's desk is much too vague to allow any conclusions. Indeed Brechner could not remember whether he found the document in April or in May.

[14] There was no evidence as to why Shields was excluded from the meeting. No other committeemen testified.

Faulkcon, related that Vendig said he was surprised at the negotiating meeting that he did not see a Black and he did not see an electrician on the committee. Vendig went on to say that there would be an electrician and a Black man on the committee, and told the three employees to decide who it would be. Shields was chosen and Vendig then said to Shields that he would be at every meeting and nobody would do anything about it.

If Vendig was by this action trying to assure craft representation, or, more importantly, minority representation, on the committee I cannot fault his motives, but even the best of motives cannot excuse this action. Employees are given the right under Section 7 of the Act to be represented by persons of their own choosing. Whatever the purpose of the union membership or the committee in excluding Shields, Vendig, by ordering his reappointment to the committee, has interfered with the rights of employees in violation of Section 8(a)(1) of the Act.

Further, by determining, unilaterally, the makeup of the employee negotiating committee Vendig, and through him Respondent, has interfered with the formation and administration of the C.I.U. in violation of Section 8(a)(2) of the Act.

The second incident during this period involved Norman Faulkcon. He had obtained a collective-bargaining agreement from someone connected with the Grain Millers and was using it to make proposals for the employees to use in bargaining with Respondent. At one point, the date was not specified, Faulkcon lent the agreement to Roy Rogers. About 2 hours later Faulkcon's foreman, Willie Smith, came to Faulkcon and they had a conversation. Faulkcon's testimony about this was not at all clear. As best I can reconstruct what was said, I find that Smith told Faulkcon that the fact that he had the agreement was brought to the attention of management, and that Faulkcon was suspected of stealing or copying a document from Supervisor Lutz' desk. As a result Vendig ordered that Faulkcon be fired, but Smith and another foreman, Tom Palmer, had talked Vendig out of it. After telling this to Faulkcon, Smith then asked to see the agreement himself, then said no, "just cool off until this thing blows over."

On the basis of this testimony, I cannot find that the General Counsel has established a violation of law. As I have found what I think is the only logical translation of Faulkcon's testimony, I cannot see in that a threat to fire him for drafting contract proposals,[15] and I cannot find any threat in Smith's admonition to Faulkcon to "cool off."

Following these events the negotiations proceeded to an agreement on the evening of May 13. At the conclusion of negotiations Davis said to Harris that the Union would take a ratification vote the next day. Harris raised no objection,[16] and the parties, according to Harris, went to have a drink in the bar.

[15] There is no evidence that Faulkcon ever formulated any proposals, or, if he did, that he transmitted those proposals to anyone.

[16] By this action, in my opinion, Respondent waived any objection to the ratification process.

At some time during that last negotiating session, Shields testified that Vendig addressed the employee committee and said "this is the contract and we want it ratified. If you don't, the plant is going to close down." He added that another union was on his back and pressing him.[17] He wanted the contract ratified so that the C.I.U. could get them off his back.[18]

These remarks by Vendig are certainly consistent with his conduct on the following day, but as I have noted I had difficulty with Shields' testimony. In addition, the incident was not alleged as an unfair labor practice. For these two reasons, I make no finding on the matter.

D. *The Events of May 14*

Ed Brechner testified that on May 12 and 13 Vendig had met with him. On both occasions Vendig told Brechner to tell the employees throughout the plant that if "any one of them was to vote against the contract there would be either a big lay off or Piasa Oil would close the plant down." Brechner did not say what he did on May 12, but he did go into the plant, and he told all the supervisors what Vendig had said. Brechner told the supervisors to gather their employees and tell them the same thing. Brechner further stated that he told employees that if they did not vote yes they would be laid off, or that Piasa Oil would shut the project down.

On May 14 Brechner testified as to another conversation with Vendig, during which the latter repeated the same orders. Brechner said that he followed orders, went through the plant telling supervisors and employees what Vendig had said.

Mary Blackard testified that Willie Smith told her on the morning of May 14 that if the contract were not ratified, the plant would shut down for 30 days, would reopen with new employees, and they would all lose their jobs. Later that morning Blackard heard Brechner tell a group of employees gathered at the toolroom that Bob Shrimp would shut down the plant if the contract were not ratified.

Rurie Shields stated that Willie Smith told him and all the electricians on May 14 that if they did not ratify the contract they would be out of a job. They would be laid off, or the plant would be closed down for 30 days, and a new crew would be hired.

Norman Faulkcon testified that Smith said the same thing on May 14 to a group of electricians including Faulkcon.

Melvin Jones, a welder, testified that Brechner told the welders as a group that Piasa wanted the Union in there and that, if they did not get it, they would close the gates. Jones also testified to hearing the same thing from Willie Smith in the electrical shop after lunch on May 14.

Dean Schuster,[19] a bulk unloader, also testified that he had heard Smith tell employees on May 14 that if they

[17] A representative of the Steelworkers had passed out literature at the plant gate on May 12.

[18] Harris did not testify as to this incident, even though Shields identified him as being present.

[19] Schuster was the only one of the employees who testified in this case who was still employed by Respondent at the time of the hearing.

did not ratify the contract they would not have a job. "They" were going to close it down.

A ratification meeting was held on the evening of May 14, at which the contract was ratified by a vote of 16 to 11.

All of this testimony was credible, and none of it was denied. I find that each of these incidents restrained and coerced employees in violation of Section 8(a)(1) of the Act.

Further, it is evident that these incidents were prompted by, and in furtherance of, a design by Respondent's construction supervisor, Herb Vendig, to assure ratification of a collective-bargaining agreement.[20] In this, the Respondent has interfered with and unlawfully intruded on procedures by which employees decide to accept or reject a proposed contract in violation of Section 8(a)(2) of the Act. *Mon River Towing*, 173 NLRB 1452 (1969), enfd. 421 F.2d 1 (3d Cir. 1969).

It follows that the execution of the contract by Respondent further violated Section 8(a)(2) of the Act, and the inclusion of union-shop provisions in that contract constituted a violation of Section 8(a)(3) of the Act.[21] *Hartz Mountain Corp.*, 228 NLRB 492 (1977); *Seaview Manor Home*, 222 NLRB 596 (1976).

IV. THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation of Section 8(a)(1), (2), and (3) of the Act, I shall recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act.

Since I have found that Respondent unlawfully interfered with the ratification process of its agreement with the C.I.U., I shall recommend that it cease giving effect to that agreement.

Since I have found that the execution of that contract was unlawful, I shall recommend that Respondent pay back to all employees who paid dues to the C.I.U. under the union-shop provisions of that contract, the amount of such dues together with interest thereon. I shall not recommend that the C.I.U. be disestablished as I have not found either that the Union was dominated by Respondent, or that it was not selected by an uncoerced majority of the employees in the bargaining unit.

CONCLUSIONS OF LAW

1. Farmers Energy Corporation is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Congress of Independent Unions, Solar Energy Workers, Local 1, is a labor organization within the meaning of Section 2(5) of the Act.

3. Local 108, American Federation of Grain Millers, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

4. Respondent Farmers Energy Corporation has violated Section 8(a)(1), (2), and (3) of the Act.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[22]

The Respondent, Farmers Energy Corporation, National City, Illinois, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Assisting any labor organization by:

(i) Furnishing the names and addresses of union agents to its employees.

(ii) Interfering with employees' free choice of bargaining representative or representatives by dictating their choice of officers, agents, or committee members.

(iii) Threatening employees with discharge or layoff if they did not ratify a collective-bargaining agreement.

(iv) Permitting its facilities to be used by employee organizations, and paying its employees for participating in union activities.

(b) Interfering with, restraining, and coercing its employees by:

(i) Directing that an employee be placed on an employee bargaining committee.

(ii) Threatening employees with discharge or layoff if they did not vote to ratify a collective-bargaining agreement.

(c) Giving effect to union-shop provisions in a collective-bargaining agreement dated May 14, 1981.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Immediately cease giving effect to the collective-bargaining agreement between it and the C.I.U., dated May 14, 1981.

(b) Pay to all employees who paid dues to the C.I.U. under the terms of a collective-bargaining agreement dated May 14, 1981, the amounts of dues so paid, together with interest thereon.

(c) Post at its National City, Illinois, facility copies of the attached notice marked "Appendix."[23] Copies of said notice, on forms provided by the Regional Director for Region 14, after being duly signed by Respondent representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained for 60 consecu-

[20] I find from Harris' testimony and from the date of execution of the contract that the parties intended that ratification was an integral part of the process and a condition precedent to the effectuation of the agreement between them.

[21] There was considerable evidence that employees were unhappy during the course of negotiations and made various efforts to make their views known. However, there is no substantive evidence that these views were transmitted either to Respondent or to the C.I.U. For example, Blackard obtained petitions from 13 employees on May 14 disclaiming the C.I.U., but Blackard did not convince me that these were transmitted either to the Company or the Union before the ratification meeting on May 14.

[22] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

tive days thereafter, in conspicuous places, including all places where notices to the employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 14, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[23] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."